

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COLUMBIA GAS OF KENTUCKY, INC.)	
)	
PETITIONER)	
)	
VS.)	CASE NO. 92-489
)	
KENTUCKY-OHIO GAS COMPANY)	
)	
RESPONDENT)	

O R D E R

On November 5, 1992, Kentucky-Ohio Gas Company ("KOG") requested the Commission approve two special contracts related to providing gas service to two former Columbia Gas of Kentucky, Inc. ("Columbia") customers, Bruce Apartments and Gla-Low Apartments. On November 19, 1992, Columbia initiated the instant case by filing a complaint against KOG alleging that KOG needed to obtain a Certificate of Public Convenience and Necessity from this Commission prior to entering into the aforementioned contracts. The Commission, accordingly, finds these contracts should be incorporated into the record of this proceeding.

IT IS ORDERED that the contracts with Bruce Apartments and Gla-Low Apartments, attached hereto and incorporated herein as Appendix A and B, respectively, be and they hereby are made a part of the record in this proceeding.

IT IS FURTHER ORDERED that KOG and Columbia shall file the original and 12 copies of the following information with the Commission with a copy to all parties of record no later than February 19, 1993. If the information cannot be provided by this date, KOG or Columbia should submit a motion for an extension of time stating the reason a delay is necessary and include a date by which it will be furnished. Such motion will be considered by the Commission. KOG and Columbia shall furnish with each response the name of the witness who will be available to respond at the hearing to questions concerning each item of information requested.

QUESTIONS FOR KOG:

1. Describe the type of heating load to be utilized by each of the prospective customers, Bruce Apartments and Gla-Low Apartments (space heating only, space heating and water heating, etc.).

2. What will be the estimated amount of additional gas to be sold by KOG to each of these customers over a 12-month period?

3. KOG has tariff rates currently on file with the Commission, yet KOG's proposed contracts with Bruce Apartments and Gla-Low Apartments offer a reduced rate to each.

a. List each commercial customer which presently purchases sales gas from KOG and the rate each is charged.

b. Of these customers, list the ones which are currently served by a special contract.

4. To the extent existing commercial customers of KOG pay the tariffed rate for gas service, explain why KOG's offer of a

special contract rate to Bruce Apartments and Gla-Low Apartments, which is lower than KOG's tariffed rate, is not discriminatory to KOG's other commercial customers?

5. Provide an itemized list of the total costs which KOG will incur, both initial and continuing costs, to provide service to Bruce Apartments and Gla-Low Apartments, and explain how the proposed special contract rate offered to each allows KOG to recover its costs to provide service to each.

6. Why isn't KOG proposing to serve these customers pursuant to the approved rates for service of \$6.27 per Mcf contained in your tariff?

7. Would Bruce Apartments and Gla-Low Apartments be willing to become KOG customers if each was required to pay KOG's tariffed rate?

8. Why shouldn't all of KOG's commercial customers be eligible for a special contract rate?

9. Explain the unique features or special circumstances regarding Bruce Apartments and Gla-Low Apartments that led to KOG's offer of a special contract rate.

10. Has KOG considered creating a separate commercial class rate? If not, why?

11. With regard to KOG's distribution main which crosses the properties on which Bruce Apartments and Gla-Low Apartments are located:

a. When was the line installed?

b. Prior to KOG's designation as a distribution utility, describe how this line was operated and its purpose in relation to KOG's overall system operation.

c. Provide a drawing of the immediate area which includes the location of Bruce Apartments and Gla-Low Apartments, designating lines owned by KOG and Columbia and the interconnect between those systems and the customers' service.

12. Prior to KOG's designation as a distribution utility, had either Bruce Apartments or Gla-Low Apartments requested service from KOG, or had KOG offered service to either?

13. Does KOG have a franchise from the city of Ashland to provide gas service within the incorporated boundaries of the city? If yes, are the Bruce Apartments and Gla-Low Apartments located within the city limits of Ashland?

QUESTIONS FOR COLUMBIA:

1. In its Complaint filed November 19, 1992, at page 4 Columbia states that "(R)espondent has not demonstrated the 'need' to bypass the existing system and (Columbia Gas) has not been given the opportunity to continue to provide service."

a. To the extent that KOG as a gas distribution utility has an obligation to serve, and since KOG has existing facilities in the immediate area of Bruce Apartments and Gla-Low Apartments, hasn't a "need" to serve been demonstrated in that both apartment complexes have requested service from KOG?

b. What type of "opportunity" does Columbia require?

c. What efforts has Columbia made to maintain service to Bruce Apartments and Gla-Low Apartments?

d. Have you offered special contract rates to these customers? Why or why not?

2. Is it the position of Columbia that any proposal by a residential or commercial customer to receive service from a gas distribution utility other than that customer's current supplier, and that gas distribution utility has existing facilities which can provide the service, requires prior approval of the Commission pursuant to Administrative Case No. 297¹ to allow that customer's service line to connect to those existing facilities? If yes, explain.

3. Respond to KOG's statement in its Memorandum filed November 30, 1992 at pages 2 and 3 that the term "facilities" in Administrative Case No. 297 means pipelines other than service lines, and that the situation with Bruce Apartments and Gla-Low Apartments is different than physical bypass as addressed in the Commission's Order in Administrative Case No. 297.

4. Given that the Commission does not have the authority to establish service territories for natural gas utilities, in a situation where two gas distribution utilities have existing facilities in the same area, shouldn't a customer have the right to request service from either utility? If not, why?

¹ Administrative Case No. 297, An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers.

5. Does Columbia have a franchise from the city of Ashland to provide gas service within the incorporated boundaries of Ashland? If yes, are the Bruce Apartments and Gla-Low Apartments within the city limits of Ashland?

Done at Frankfort, Kentucky, this 9th day of February, 1993.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:



Executive Director

NATURAL GAS PURCHASE AGREEMENT

THIS AGREEMENT made as of the 28th day of September 1992, by and between **KENTUCKY OHIO GAS COMPANY**, a Delaware corporation, with the mailing address of **2580 Hoods Creek Pike, Ashland, Kentucky 41101**, (hereinafter called "**SELLER**") and **BRUCE APARTMENTS**, a Kentucky corporation, with the mailing address of **P.O. Box 1699, Ashland, Kentucky 41105**, (hereinafter called "**BUYER**").

WITNESSETH

That for and in consideration of the covenants, agreements, terms, provisions and conditions hereinafter set forth, the parties do hereby mutually agree, each with the other, as follows:

1. DEFINITIONS

- A) "Month" shall mean a calendar month.
- B) "Natural Gas" shall mean natural gas **SELLER** agrees to make available for sale to **BUYER** and being of merchantable quality.
- C) "Dekatherm" shall mean a quantity of natural gas that contains a gross heating value of 1,000,000 BTU's.
- D) "BTU" shall mean British Thermal Unit.

2. TERM

Subject to the provisions of this Agreement, this Agreement shall be for a primary term of FIVE (5) years commencing on the 1st day of the month of November, 1992 and shall automatically renew for each one-year period unless, at least thirty (30) days prior to the termination of the primary term or any succeeding one-year term, either party shall have given the other party written notice its intention to terminate. This Agreement may also be terminated as provided in section 8 below.

3. QUANTITY OF GAS

SELLER shall provide 200 MCF of gas per day to BUYER during the term hereof, and Buyer agrees to purchase said amount as needed from SELLER

BUYER, however, may at any time during the term hereof and at the sole discretion of SELLER, purchase additional gas from SELLER in excess of the amount herein provided at a price agreeable to both parties.

4. DELIVERY POINT

The delivery point shall be BUYER's service line located at the 1200 Steela drive, Ashland, Kentucky, 41102.

5. DELIVERY PRESSURE

The delivery pressure of natural as delivered hereunder shall not be more than 85 psig.

6. QUALITY

The natural gas delivered hereunder shall be of commercial quality containing no more than one (1) grain of hydrogen sulfide nor more than ten (10) grains of total sulfur per one hundred (100) cubic feet. The natural gas so delivered shall contain an average total heating value for any the period hereof not less than nine hundred and fifty (950) British Thermal Units per cubic foot; provided, however, that BUYER shall not be required to accept natural gas hereunder having a heating value of less than nine hundred fifty (950) BTU per cubic foot.

7. MEASUREMENT

a) The natural gas volumetric measurement base shall be one (1) cubic foot of gas at a pressure base of 14.73 pounds per square inch absolute and a temperature base of 60 degrees Fahrenheit. The sales unit shall be one thousand (1000) cubic feet at base conditions in accordance with Boyles' and Charles' Laws and applicable deviations therefrom, for gas measurement under varying pressures. The gas flowing temperature and specific gravity shall be assumed to be 60 degrees fahrenheit and 0.600, respectively.

b) The thermal measurement base shall be the product of one (1) cubic foot of gas defined in (a) above and the heat content on a dry basis, of the gas. The heat content (BTU's) shall be that as determined for natural gas received by BUYER from

pipeline and reported to BUYER on at least a monthly basis. In the event that the price is invoiced on a thermal billing bases, the sales unit shall be one dekatherm.

8. PRICE

During the term of this Agreement, the price to be paid by BUYER shall be \$4.85 per MCF's at point of delivery as defined herein. That price may be revised with the new price to be effective at the beginning of any subsequent one-year period by either party having given notice of a desire to renegotiate the price at least 30 days prior to the end of the current one-year period. If a new price acceptable to Seller and Buyer cannot be negotiated, this Agreement will terminate at the end of the current one-year period.

9. BILLING AND PAYMENT

BUYER shall make payment to SELLER within twenty (20) days after receipt of SELLER's monthly statement. In the event BUYER's payment of any statement is not received by the SELLER within the applicable time period set forth above, an interest charge of one and one half (1 1/2 %) per month prorated daily shall be payable upon the unpaid portion of the amount due SELLER. In the event an error is discovered in the amount billed in any statement rendered by SELLER, such error shall be adjusted by SELLER within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within sixty

(60) days from the date of claimant's discovery of such error, but in no event later than twenty-four (24) months from the date of the statement claimed to be in error.

10. WARRANTY AND LIABILITY

a) SELLER warrants that it has good and merchantable title to all natural gas delivered and sold hereunder and that same is free and clear of all taxes, liens and encumbrances. SELLER further warrants that the natural gas sold and delivered thereunder shall conform to any specifications set forth herein.

b) Neither party shall be liable to the other party regardless of fault or negligence, for any special, consequential, indirect or punitive damages of any kind or character arising out of or related to a breach of this Agreement, and no claim for such damages shall be made by either party.

11. TAXES

In addition to the price specified, BUYER shall pay sales and use taxes which shall be added to invoiced amounts unless exemption certificates are supplied by BUYER.

12. ASSIGNABILITY

The covenants, agreements, terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns;

provided, however that neither SELLER nor BUYER shall assign this Agreement or any interest herein without the prior written consent of the other party except in consequence of a transfer or assignment to an affiliate, or a merger, consolidation, reorganization (except a reorganization pursuant to bankruptcy proceedings), or sale of all or substantially all assets.

13. FORCE MAJEURE

Neither party shall be liable for any damages or otherwise to the other for any failure to perform hereunder when performance is prevented, delayed, or otherwise affected by or in connection with any force majeure cause which would include embargo, order or requisition of any government or acting authority, act of God, fire, explosion, strike, industrial disturbance, accident, war, failure, loss or impairment of SELLER's supplies at its facilities designated herein, breakdown of facilities of production or transportation, shutdown of facilities for maintenance, shutdown or curtailment of production at BUYER's refineries regardless of whether such shortage or unavailability is beyond BUYER's control provided only that the same is not willfully brought about for the purpose of excusing BUYER's failure to perform, or any other causes whatsoever beyond a party's reasonable control and without the fault or negligence of the party giving notice thereof whether or not similar to the causes enumerated herein.

The party rendered unable, wholly or in part, by force

majeure to carry out its obligations under this Agreement shall give the other party prompt written notice of the force majeure with reasonably full particulars concerning it. The party giving notice of such force majeure shall exercise due diligence to remedy the situation and the obligations of both parties to the Agreement shall be suspended until such time as the force majeure is removed. Such party shall further notify the other party upon the termination of the force majeure.

14. TERMINATION

a) Upon default by either party in the performance of any of the terms, provisions, conditions or covenants contained herein, the party not in default shall give the defaulting party written notice specifying such default, and the defaulting party shall have twenty (20) days after receipt of such notice to remedy or correct the default. If at the end of said twenty (20) days the defaulting party has not remedied or corrected the default, the other party may, at its own option, immediately terminate this Agreement upon written notice to the defaulting party of such intent.

b) In addition, either party may forthwith terminate this Agreement if receivership or bankruptcy proceedings are initiated by or against the other party.

c) Termination of this Agreement for any of the causes herein contained shall be without prejudice to any other right or remedy provided by this Agreement or at law.

15. NOTICE

All notices required or permitted hereunder shall be given in writing and mailed by certified or registered mail to the party entitled hereunder at the following addresses:

SELLER: KENTUCKY OHIO GAS COMPANY, INC.
2580 Hoods Creek Pike
Ashland, KY 41101
ATTN: H. Jay Freeman

BUYER: BRUCE APARTMENTS
1709 Clements Drive
P. O. Box 1699
Ashland, KY 41105
ATTN: WAYNE RICE

16. ENTIRE UNDERSTANDING

This Agreement contains all of the terms and provisions agreed to by the parties concerning the subject matters hereof. Any prior or contemporaneous agreement or understanding, oral or written, additional to or in variance herewith is void. This Agreement shall not be altered or amended in the future except in writing and signed by the parties hereto.

17. SEVERABILITY

If any provision of this Agreement, or the application of any such provision to any person or in any of the circumstances is held invalid, the application of such provision to any other person or in any other circumstance, and the remainder of this Agreement, shall not be affected thereby and shall remain in full effect.

18. WAIVER

The failure of either party hereto in any one or more instance to insist upon the performance of any of the terms or conditions of this Agreement shall not be construed as a waiver of such party's rights with respect to any continuing or subsequent breach of those or any other terms or conditions, and the same shall remain in full force and effect.

19. APPLICABLE LAW

This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Kentucky.

In witness whereof, the parties have made and executed this AGREEMENT as of the day and year first above written.

KENTUCKY OHIO GAS COMPANY

BY: 

ITS: GENERAL MANAGER

BRUCE APARTMENTS

BY: 

ITS: OWNER

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 92-489 DATED 2/9/93

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In witness whereof, the parties have made and executed this AGREEMENT as of the day and year first above written.

KENTUCKY/OHIO GAS COMPANY

BY: 

ITS: GENERAL MANAGER

GLA-LOW APARTMENTS, LP.

BY: 

ITS: GENERAL PARTNER